

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/09-02/11  
Date: 06 October 2014

**TRIAL CHAMBER V(B)**

**Before:** Judge Kuniko Ozaki, Presiding  
Judge Robert Fremr  
Judge Geoffrey Henderson

**SITUATION IN THE REPUBLIC OF KENYA**

**IN THE CASE OF  
THE PROSECUTOR *v.* UHURU MUIGAI KENYATTA**

**Confidential (*ex parte*)**

**Proposed Public Redacted version of 'The Government of the Republic of Kenya's  
Update to the Trial Chamber pursuant to the "Decision on Prosecution's  
applications for a finding of non-compliance pursuant to Article 87 (7) and for an  
adjournment of the provisional trial date of 31 March 2014' (ICC-01/09-02/11-941-  
Conf-Exp) dated 29 August 2014**

**Source: Government of the Republic of Kenya**

**Document to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:**

**The Office of the Prosecutor**

Ms. Fatou Bensouda

Mr. James Stewart

Mr. Benjamin Gumpert QC

**State's Representatives**

Mr. Githu Muigai, SC, Attorney General  
Of the Republic of Kenya

***Amicus Curiae***

**REGISTRY**

---

**Registrar**

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Other  
Section**

## **I. INTRODUCTION**

1. The Government of the Republic of Kenya hereby respectfully submits its update as directed in the Trial Chamber V (B)'s '*Decision on Prosecution's applications for a finding of non-compliance pursuant to Article 87 (7) and for an adjournment of the provisional trial date*'<sup>1</sup> ('the Decision') wherein the Chamber stated thus:

'**DIRECTS** the Prosecution and the Kenyan Government to file submissions updating the Chamber regarding the status of execution of the Revised Request and the status of related consultations, as applicable, on 30 April 2014 with further updates due thereafter on a two-monthly basis;<sup>2</sup>

2. The Government of the Republic of Kenya makes these submissions to update the Trial Chamber V (B) (the 'Trial Chamber') on the status of the execution of the Revised Request and its consultations, in this regard, with the Office of the Prosecutor ('Prosecution') since its last submissions to the Trial Chamber dated 30 June 2014.<sup>3</sup>

## **II. SUBMISSIONS**

3. On 3 July 2014, the Prosecution sent a letter to the Office of the Attorney General and Department of Justice of the Republic of Kenya ('Office of the Attorney General') acknowledging receipt of the documents sent by the Office of the Attorney General under its cover

---

<sup>1</sup>ICC-01/09-02/11-908, 31 March 2014.

<sup>2</sup> Ibid, p. 46.

<sup>3</sup> ICC-01/09-02/11-928-Conf-Exp, 30 June 2014.

letter dated 23 June 2014;<sup>4</sup> and raising supplementary questions relating to the documents it received under the said cover letter on all the eight requests for assistance contained in the Revised Request.<sup>5</sup> The cover letter of 23 June 2014 from the Office of the Attorney General transmitted the following six (6) sets of documents:

- i. Letter from the Communications Commission of Kenya [REDACTED];<sup>6</sup>
- ii. Letter from the Central Bank of Kenya [REDACTED], enclosing bank account records [REDACTED];<sup>7</sup>
- iii. Letter from the Kenya Revenue Authority [REDACTED], enclosing the income tax returns records [REDACTED] in both paper and electronic formats;<sup>8</sup>
- iv. Letter from Kenya's National Intelligence Service [REDACTED];<sup>9</sup>
- v. Letter from the Ministry of Land, Housing and Urban Development [REDACTED];<sup>10</sup> and
- vi. An internal memo from the Companies Registry [REDACTED].<sup>11</sup>

---

<sup>4</sup> Letter from the Office of the Attorney General dated 23 June 2014 [REDACTED] (Annexed and marked 'I')

<sup>5</sup> Letter from the Office of the Prosecutor [REDACTED] dated 3 July 2014. (Annexed and marked 'II').

<sup>6</sup> Annexed and marked 'III'

<sup>7</sup> Annexed and marked 'IV'

<sup>8</sup> Annexed and marked 'V'

<sup>9</sup> Annexed and marked 'VI'

<sup>10</sup> Annexed and marked 'VII'

4. The Office of the Attorney General conveyed the supplementary questions set out in the Prosecution's letter of 3 July 2014 to the relevant Kenyan authorities for their action. By 7 July 2014 it had received a response from the Companies Registry in answer to the queries raised by the Prosecution's letter of 3 July 2014, in particular,

[REDACTED]

transmitted to the Prosecution on 7 July 2014.<sup>12</sup>

5. On 7 and 8 July 2014 Office of the Attorney General and the Prosecution met [REDACTED] to consult on the questions raised in the Prosecution's letter of 3 July 2014 with a view of addressing these questions; as well as, pursuant to the Chamber's '*Scheduling order and agenda for status conference on 9 July 2014*'<sup>13</sup>, to develop a document identifying the issues they wished to raise in the *ex parte* and public sessions, respectively, of the status conference of 9 July 2014.
6. The agreements reached on the questions raised in the Prosecution's letter of 3 July 2014 were set out in the '*Joint guide to oral submissions to be made by the Prosecution and the Government of Kenya in response to the*

---

<sup>11</sup> Annexed and marked 'VIII'.

<sup>12</sup> Internal memo from the Companies Registry dated [REDACTED] (Annexed and marked 'IX').

<sup>13</sup> (Public) ICC-01/09-02/11-929, 4 July 2014, para. 3.

*Chamber's scheduling order of 4 July 2014 concerning the status conference to take place on 9 July 2014*<sup>14</sup>

7. On 9 July 2014, the Chamber held a status conference to discuss the following issues as set out in the '*Scheduling order and agenda for status conference on 9 July 2014*'<sup>15</sup>:

- i. Update from the Prosecution and the Kenyan Government on the current status of the co-operation and consultations between them;
- ii. Envisage next steps and timeline in relation to such co-operation; and
- iii. Any other matters.

8. During the *ex parte* closed session discussions before the Trial Chamber, in which only the Prosecution and the Government of the Republic of Kenya, represented by the Office of the Attorney General ('the parties') were the participants, [REDACTED]

9. Therefore, [REDACTED] the Trial Chamber requested the parties to each provide it with formal written submissions covering all issues relating to relevance, necessity, specificity and scope, to enable the Trial Chamber to decide on the disputed issues.<sup>16</sup>

10. The Prosecution and the Government of the Republic of Kenya filed their submissions dated 11 July 2014 and 16 July 2014, respectively.<sup>17</sup>

---

<sup>14</sup> (Public) ICC-01/09-02/11-930, 8 July 2014.

<sup>15</sup> (Public) ICC-01/09-02/11-929 4 July 2014.

<sup>16</sup> ICC-01/09-02/11-T-29-CONF-EXP-ENG, (Closed Session), 9 July 2014, pp. 31,33,36 & 37.

<sup>17</sup> '*Prosecution written submissions in compliance with the order made by the Chamber in the course of proceedings on 9 July 2014*' ICC-01/09-02/11-933-Conf-Exp (Confidential) 11 July 2014; and '*The Government of the Republic of Kenya's Submissions pursuant to the order for Submissions given by*

11. [REDACTED]

12. [REDACTED]

13. On 29 July 2014, the Trial Chamber delivered its '*Decision on the Prosecution's revised cooperation request*'<sup>18</sup> ('Decision of 29 July 2014') in which it found that the Revised Request conformed with the tripartite principles of relevance, specificity and necessity for the purpose of a cooperation request pursuant to Part 9 of the Rome Statute.<sup>19</sup> Moreover, the Trial Chamber called upon the parties to pursue a cooperative approach in resolving practical difficulties identified in implementing some of the request items in the Revised Request.<sup>20</sup>

14. [REDACTED].

15. [REDACTED].

16. [REDACTED].

17. [REDACTED].

18. Moreover, still on 22 August 2014, thereafter on 26 August 2014 and 27 August 2014; the Office of the Attorney General, in compliance with the Trial Chamber's Decision of 29 July 2014, wrote letters to the Prosecution conveying responses from the relevant Kenyan authorities regarding implementation of requests for company records; motor

---

the Trial Chamber at the Status Conference of 9 July 2014' ICC-01/09-02/11-934-Conf-Exp (Confidential) 16 July 2014, respectively.

<sup>18</sup> (Public) ICC-01/09-02/11-937, 29 July 2014.

<sup>19</sup> Ibid, para. 47.

<sup>20</sup> Supra note 12, para. 41&42.

vehicle records; telephone records; security and intelligence records; land records; and income tax and value added tax (VAT) returns.

These were responses obtained subsequent to the Office of the Attorney General's communication, to the relevant Kenyan authorities, of the requests contained in the Revised Request alongside the Prosecution's supplementary questions raised in its letter of 3 July 2014 referred to hereinabove.

**19. [REDACTED]:**

- i. [REDACTED].<sup>21</sup>**
- ii. [REDACTED].<sup>22</sup>**
- iii. [REDACTED].<sup>23</sup>**
- iv. [REDACTED].<sup>24</sup>**
- v. [REDACTED].<sup>25</sup>**
- vi. [REDACTED].<sup>26</sup>**
- vii. [REDACTED].<sup>27</sup>**
- viii. [REDACTED].<sup>28</sup>**

---

<sup>21</sup>[REDACTED].

<sup>22</sup>[REDACTED].

<sup>23</sup>[REDACTED].

<sup>24</sup>[REDACTED].

<sup>25</sup> [REDACTED].

<sup>26</sup> [REDACTED].

<sup>27</sup> [REDACTED].

<sup>28</sup> [REDACTED].



20. Subsequently, the responses obtained from the relevant Kenyan authorities were transmitted to the Prosecution as follows:

i. Under cover of the letter of 22 August 2014 the Office of the Attorney General transmitted the following documents:<sup>29</sup>

a) [REDACTED].

b) [REDACTED].<sup>30</sup>

c) [REDACTED].

d) [REDACTED].<sup>31</sup>

ii. Under cover of its letter of 26 August 2014 the Office of the Attorney General transmitted a response, in respect of the request for land records, from Kenya's Ministry of Land, Housing and Urban Development [REDACTED]:<sup>32</sup>

a) [REDACTED];

b) [REDACTED];

c) [REDACTED];

d) [REDACTED]; and

e) [REDACTED].

---

<sup>29</sup> [REDACTED].

<sup>30</sup> [REDACTED].

<sup>31</sup> [REDACTED].

<sup>32</sup> [REDACTED].

- iii. Under cover of the letter of 27 August 2014 the Office of the Attorney General transmitted a response and records, regarding the request for income tax and value added tax returns records, from the Kenya Revenue Authority. [REDACTED].<sup>33</sup>

The above stated responses to the requests contained in the Revised Request were electronically sent to the Prosecution on the dates indicated on the cover letters of the Office of the Attorney General; while the hard copies of the response were dispatched on the subsequent working day.

21. Later in the day on 27 August 2014, the Prosecution sent a letter to the Office of the Attorney General acknowledging receipt of the documents conveyed under the cover letter of the Office of the Attorney General of the Republic of Kenya of 22 July 2014.<sup>34</sup> [REDACTED].

22. The Office of the Attorney General submits that the relevant tax returns records obtained from the Kenya Revenue Authority were sent to the Prosecution and no convincing reason has been advanced explaining why these tax returns records were not considered prior to the Prosecution formulating and sending its communication of 27 August 2014.

23. On 28 August 2014 the Office of the Attorney General wrote to the Prosecution stating that the responses relating to some of the

---

<sup>33</sup> [REDACTED].

<sup>34</sup> Letter from the Office of the Prosecutor, [REDACTED]. (Annexed and marked 'XXXII')

Prosecution's supplementary questions contained in its letter of 3 July 2014 which were raised in relation to responses on the request for telephone records sent to the Prosecution under cover of the letter of 23 June 2014; as well as responses to supplementary questions raised in the Prosecution's letter of 3 July 2014 in relation to bank records transmitted under the said cover letter of the Office of the Attorney General of 23 June 2014, were being actively sought from the relevant Kenyan authorities and as soon as they were received they would be transmitted to the Prosecution.<sup>35</sup>

24. In keeping with the above undertaking that the Office of the Attorney General gave to the Prosecution, on the afternoon of 28 August 2014 the Office of the Attorney General transmitted responses received from the Central Bank of Kenya answering the Prosecution's supplementary questions of 3 July 2014 in relation to the request for clarification on the bank records transmitted on 23 June 2014 and the request for foreign exchange transaction records.<sup>36</sup>

### III. CONCLUSION

25. It is now clear from the foregoing that the Government of the Republic of Kenya, using its best endeavours, has provided the fullest possible responses to the further questions raised by the Prosecution in its letter of 3 July 2014, subject only to the lack of specificity, material disclosure

---

<sup>35</sup> Letter from the Office of the Attorney General dated 28 August 2014 [REDACTED]. (Annexed and marked 'XXXIII')

<sup>36</sup> Letter from the Office of the Attorney General dated 28 August 2014 [REDACTED]. (Annexed and marked 'XXXIV'); Letter from the Governor of the Central Bank of Kenya regarding bank records (Annexed and marked 'XXXV'); and Letter from the Governor of the Central Bank of Kenya regarding foreign exchange transaction records (Annexed and marked 'XXXVI')

by the Prosecution and the legal framework within which some of the information could be procured.

Respectfully submitted,



---

Githu Muigai, SC

Attorney General of the Republic of Kenya

Dated 6 October 2014

At Nairobi, Kenya